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STATUTE OF FRAUDS INAPPLICABLE TO MARITIME CONTRACTS.—The recent decision of the Supreme Court in *Union Fish Company* v. *Erickson* (Adv. Opinions, February 1, 1919, 143) may occasion surprise although it is only the logical outcome of the principle announced in *Workman* v. *New York*, 179 U. S., 552, and *Southern Pacific* v. *Jensen*, 244 U. S., 205. The Fish Company, a California corporation, had engaged Erickson to serve as master of one of its vessels, in Alaska waters, for a term of not less than one year, commencing at a future date. The contract was made in San Francisco and was wholly in parol. It was to be performed in Alaska and on the high seas. After a month's service the master was wrongfully discharged and then brought suit in admiralty for the damages sustained by the breach of contract. The shipowner contended that the contract was invalid under the statute of frauds of California, as well as of Alaska, being a parol agreement which could not be performed within one year. The Supreme Court decides that the contract, by reason of its being maritime in its nature, is not within the statute and sustains a decree in favor of the master; the uniformity of the maritime law must not be impaired by local statutes and the validity of maritime contracts must be determined by that law alone.

The ordinary rule by which the validity of a contract is tested, including the application of the statute of frauds, is that of the *lex loci contractus*. STORY ON CONFLICT OF LAWS §262. This, of course, may yield to the *lex loci solutionis* if the intention of the parties requires, *Jacobs* v. *Credit-Lyonnais* 12 Q. B. D., 589; and, in maritime transactions, both may be displaced in favor of the law of the ship's flag. CARVER ON CARRIAGE BY SEA § 204. In the *Erickson* case, however, the contract would have been invalid under either of these three rules. It was plainly within the statute of California, if the place where it was made determined the rule, *Seymour* v. *Oelrichs*, 156 Cal. 782; it was likewise within the statute of Alaska, if the place of performance were resorted to, WOOD ON FRAUDS, 490; and the law of the ship's flag would still leave it subject to the laws of California, since the ship was owned by a California corporation and continued to be a part of that state and subject to its laws, even while on the high seas. *Crapo* v. *Kelly*, 16 Wall, 610; *The Hamilton*, 207 U. S., 398. The decision, therefore, presents a new and predominating rule for testing the validity of maritime contracts, namely, the maritime law. Local statutes may not be invoked, it would seem to follow, either to impair or to protect maritime contracts because their validity must be tested by the maritime law alone. The case may have far reaching effects and necessitate legislation on the subject of maritime contracts. The maritime law, by itself, is quite meager on the subject of the formation of contract. It has no settled doctrines of its own, in this respect, but has usually followed local law. If a contract existed, according to the local law, and was maritime in its nature, the admiralty had jurisdiction. Whether or not a contract existed was determined by the doctrines of the local law. In countries following English doctrines, for example, the admiralty would not recognize an agreement void for want of consideration or mutuality, not because the admiralty has any rules of its own in regard to consideration or mutuality, but because there was no contract by local law where these ele-

ments were lacking. *Dennis* v. *Slyfield,* 117 Fed., 474. On the other hand, in countries where the English doctrine does not prevail, the absence of consideration would not prevent the admiralty enforcing an agreement otherwise within its jurisdiction. In other words, the admiralty has not yet evolved any law of contracts of its own except in regard to the secondary matter of testing their maritime nature. It has left this matter of formation of contract, the essentials of its validity and the requisite evidentiary conditions, to local law, common or statutory. Doubtless every local law, however, tends to impair uniformity. This can only be avoided by a general code of maritime law. Until it is promulgated, uniformity will be impossible. The logical effect of the decision in the *Erickson* case will be to emphasize the necessity for a complete revision and codification of our maritime law. Its development has been so interwoven with local law that a somewhat chaotic situation may develop, if the effect of this decision is correctly estimated to be a divorcement from the local law in respect of contracts before anything has been prepared to take its place.

The principle of the decision would, it seems, have been equally fatal to the statute of frauds if the action had been at law in a state court. A writ of error from the Supreme Court of the United States could have been invoked to review its judgment and the same result would have followed as is accomplished by the decision in the proceeding in admiralty.

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SHOULD A CORRECT VERDICT BE SET ASIDE BECAUSE THE JURY FAILED TO FOLLOW ERRONEOUS INSTRUCTIONS?—One of the common grounds of a new trial is that the verdict is contrary to law. What law is meant,—the law as it really is, or the law that was given to the jury by the court's instruction? Most cases hold to the latter view. It is the duty of the jury to take the law from the court, whether the court in so giving it is right or wrong. Hence, the jury violate their duty if they fail to follow instructions, even if the instructions are wrong, and a verdict based on a breach of the jury's duty cannot be allowed to stand, even though intrinsically correct. *Talley* v. *Whitlock,* (Ala., 1917) 73 So. 976; *Gartner* v. *Mohan,* 39 S. D. 202; *Yellow Poplar Lumber Co.,* v. *Bartley,* 164 Ky., 763; *Soderburg* v. *Chicago St. P. M. & O. Ry. Co.,* 167 Ia., 123; *Freel* v. *Pietzsch,* 22 N. D., 113; *Barton* v. *Shull,* 62 Neb., 570; *Dent* v. *Bryce* 16 S. C., 14; *Murray* v. *Heinze,* 17 Mont., 353.

The argument on which this rule is founded is well expressed by the Supreme Court of Montana in *Murray* v. *Heinze, supra,* where the court said: "But counsel for the appellant contend that, the instruction being erroneous, the court erred in setting aside the verdict because of the fact that the jury wholly disregarded it . . . . This is the first time it has been seriously contended in this court that the jury have the right to determine the law in an ordinary suit at law and to absolutely disregard the instructions of the court on the ground that, in the opinion of the jury, the instructions of the court are erroneous. If the contention of the appellant is to be upheld, what may we not anticipate as the result in the administration of the law in this state? If the jury may rightfully invade the province of the court, why may not